



April 4, 2008

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551  
Vienna, Va. 22183

Dear Ms. Johnson:

BB&T Corporation (BB&T) is a southeast regional financial holding company with approximately \$132 billion in assets. Branch Banking and Trust Company is the lead bank with approximately 1,500 financial center locations throughout the Southeast. This comment letter is submitted on behalf of the lead bank as well as its applicable affiliates.

BB&T originates mortgage loans both for sale in the secondary market through its home mortgage division as well as mortgage loans to be held in portfolio primarily through its consumer lending division. Where the practices of those two divisions differ BB&T offers comments on how the proposal would affect each originating division.

BB&T appreciates this opportunity to comment on proposed changes to Regulation Z. We support the proposal's intent to protect the public from unfair or deceptive mortgage lending and advertising practices. However, we offer the following comments for consideration.

#### General Effect of Increased Regulation on Lenders and Consumers

Multi-state lenders such as BB&T's lead bank (a state bank chartered in North Carolina) face a web of state and local lending laws that grows continually more complex. For example, if the proposal were enacted, each mortgage loan in North Carolina would be subject to up to five different APR or fee tests:

- NC's general fee limit of 5% of the loan amount;
- NC's limit on certain fees that in the aggregate may not exceed the greater of \$150 or .25% of the loan amount;
- NC's new "rate spread loan" rules for loans above a certain APR threshold;
- The existing TILA/Regulation Z test for high-cost loans; and
- The proposed TILA/Regulation Z test for higher-priced loans.

Calculations to determine if a loan exceeds various thresholds are complex, and penalties are severe. This leads to substantially increased risks and costs for lenders, including:

- Risk that troubled borrowers will indefinitely stave off legitimate collection efforts by raising a host of technical allegations relating to a specific rate or fee test ultimately resulting in delays in prompt resolution and increased collection costs;
- Decreased willingness of investors to purchase loans that could be categorized as high-cost or higher-priced (especially in certain states or areas);
- Substantially increased costs in maintaining systems and procedures to test for various rate and fee thresholds;
- Increased staffing to take any necessary actions for special disclosures or underwriting, if the lender's policy allows it to offer specially-defined loans.

The effects of lenders' attempts to manage the steadily-increasing risks and costs associated with state, local and federal anti-predatory-lending laws include:

- Decreasing the number and type of loan products offered;
- Increasing the stringency of underwriting standards;
- Increasing fees to consumers (for lending and deposit services) to offset costs;
- Increasing interest rates to all consumers, including those applying for prime and other non high cost loan products, to offset costs;
- Decreasing the availability of credit as a result of the more stringent underwriting guidelines and increased rates and fees.

The demise of certain creative loan products in the marketplace and the tightening of some underwriting standards are welcomed by BB&T. Such desirable market corrections enable traditional lenders such as BB&T to better compete with non-bank lenders who previously lured potential borrowers away with dubious "easy money" deals.

***However, the overall effect on BB&T and other lenders of increased federal regulation with no relief from state regulation will be decreased availability of mortgage and home equity credit to consumers, at increased cost. BB&T welcomes the enhancement of federal Regulation Z if it is accompanied by relief regarding state and local regulation. Federal pre-emption would level the playing field among lenders, increase investor and market confidence, and lead to mortgage credit being more readily available to consumers at lower cost.***

#### Creation of "Higher Priced Loans" Category

We do not favor the creation of a new category of loans requiring special treatment. Lenders must already test for various state, local and federal specially-defined APR and fee thresholds. Protections already exist under federal law and many state laws for loans priced at higher levels. Further, the proposed "higher-priced" category may inadvertently cover prime and Alt-A loans depending on market conditions. This additional layer of

‘checks and balances’ coupled with the numerous existing state, local, and federal laws will cause inefficiencies for BB&T in the form of additional audit requirements, programming, training and other miscellaneous administrative functions to ensure compliance with this new layer. These inefficiencies will drive up the costs for BB&T and ultimately our clients.

A new higher priced loan category would appear to create a tension between the pricing data reported publicly on HMDA and the entirely different and not publicly-reported “higher priced loans.” Because the publicly reported pricing data is calculated differently, it is reasonable to assume that regulators and consumer groups will want access to lenders’ “higher-priced loan” data to analyze for disparities based on a prohibited basis. Lenders would then have to track, analyze, and report on an entirely new class of data to regulators, if not to the public.

### APR Trigger for Higher-Priced Loans

We understand that the primary intent of the “higher priced loan” category is to ensure protections for sub-prime borrowers. The proposed APR trigger is linked to Treasury securities. However, the current market is highly unpredictable. It is not clear that Treasury security rates will move in the same relationship to mortgage rates as they have in the past. It is feasible to picture market events under which the proposed APR trigger would cover substantial portions of prime conforming mortgage production, at least temporarily. The lower the APR trigger, the greater the likelihood of coverage extending beyond what was intended. Therefore we recommend building more room into the trigger (at least 4% for first liens and 6% for subordinate) to allow for market events.

Not only do the new triggers create a more complex tracking and disclosure structure as a result of differences in state and federal definitions, the triggers, as proposed, could categorize a majority of nearly every loan product as a higher cost mortgage. To illustrate our concerns, current APRs for some 15 year fixed rate mortgages range from 5.432% to 6.854%. Under the proposal a 15 year mortgage would use the 7 year security as comparable for purposes of defining higher cost mortgages and a first lien mortgage trigger APR would be 5.84% (2.84% + 3%). Similarly, a 30 year mortgage APR trigger would be 6.44% based on the 10 year security (3.44% + 3%) compared to market rates of 6.125% – 6.906%. A 5/1 ARM product would have a trigger of 5.37% while the current APRs range from 5.422% – 6.854%. The APR trigger for a one year ARM would be 4.37%, which is an unreasonably low number. The APR for an ARM loan is calculated based on the fully indexed rate; to avoid the low trigger the interest rate would have to be below market rates not only initially, but for subsequent adjustments.

We recognize the proposal’s attempt to mitigate the “yield curve effect” by developing a complex scheme using loan product characteristics and anticipated payoff dates to match APRs to the Treasury security likely to be most comparably priced. However, the costs to lenders of implementing and maintaining programming to track the proposed scheme

greatly outweigh the benefits. With such a complex trigger scheme that introduces a whole new set of triggers, the additional triggers will create confusion and increase the potential for calculation, and thus disclosure, errors.

The impact to lenders (and to costs passed on to consumers) would be minimized by simply adopting the same method as Regulation C/HMDA for matching APRs on loans to “comparable” securities. Regulation C’s timing method should also be adopted, as there is limited certainty as to the APR until the rate is locked. Initial APRs can change significantly for reasons such as clients changing the requested loan amount or loan product.

A final consideration regarding the proposed higher cost mortgages is that this new regulation will have a much wider impact on our client base than only those clients seeking sub-prime or ALT-A mortgages, particularly those originated and held in our consumer loan portfolio. Of specific concern is a pricing threshold that does not take into account the various types of collateral impacted by this regulation resulting in a rate structure comparison that is not on an equal field. For example, loans secured by mobile homes or short term interest only construction loans follow a pricing schedule that is significantly different than a 1-4 single family dwelling. Banks need to be able to price loans to compensate for other risk factors, including loan purpose and collateral without fear of additional burdens imposed by being classified as a higher cost mortgage. The inability to properly price a loan according to risk or collateral will in turn cause an increase in costs to other clients as an offset. As discussed previously, the proposed triggers will set the higher priced loan level at an unnatural low, thus impacting a greater number of clients, particularly those who may not desire or qualify for secondary market loans..

## Fee Trigger for Higher-Priced Loans

Adding a fee trigger to the APR trigger would be unnecessary and ineffective. First, adding a fee trigger adds still more to lenders’ compliance risks and costs which will ultimately be passed on to consumers. Also, the increase in lenders’ fees to cover increased compliance costs will not necessarily be at a per-loan level. Lenders are aware that increasing fees at a per-loan level may trip other thresholds such as state “high cost loan” or “covered loan” limits or investor limits, and may decrease the pool of qualified borrowers by requiring more cash to close. Therefore it is likely that fee increases will be spread among all consumers, even those using services other than mortgages. ***The cost of mortgage and banking services will increase for all consumers, at all levels, with every increase in regulatory complexity.***

## Consumer Protections for Higher-Priced Loans

Lenders may choose to control the risk associated with inadvertent errors on “higher priced loans” by ceasing to offer or severely restricting certain types of credit, such as reduced-documentation products. While such products may not be suitable for sub-prime borrowers, they do fill a place with mainstream borrowers, who will then have fewer product choices. Additionally, because lenders may impose escrow accounts on a wider range of loans than strictly required by law, in order to protect against inadvertently overlooking a higher-priced mortgage, more borrowers will have to bring more money to the closing table. Those borrowers will also lose the choice of managing their own cash flow for home-related assessments.

## “Bright Line” Standard for Debt-to-Income Ratio

We agree that “bright line” standards are often useful, and that mortgage applicants with a total debt-to-income (DTI) ratio exceeding 50% generally require more careful underwriting. However, in this instance, we believe a “bright line” standard would create more issues than it would resolve. First, different investors have different and complex guidelines for lenders to follow in calculating DTI. Secondly, reasonable underwriters or auditors can calculate very different but defensible DTIs on a given loan. Many types of income are difficult to quantify, including investment or dividend income, tips, commission, rent received from boarders, and seasonal income or income from jobs that are historically sensitive to economic fluctuations. Finally, a bright line test does not take into consideration such things as loan purpose. For example, in a workout situation a DTI ratio exception could exist, but the client’s financial situation could actually be improved as a result of the credit granted. Therefore, rather than a bright line of a 50% DTI, we prefer a standard of reasonableness. Reasonableness may vary by circumstance and allow for the exercise of meaningful underwriting judgments, rather than lenders perhaps shutting consumers out of beneficial credit in order to control potential liability. Should the Board elect to apply a bright line test we ask the Board to consider certain exceptions where the borrower’s financial condition is improved by the transaction.

## Time Horizon

If any specific horizon is set for lenders’ determination that the applicant can make the payments at least for a specified period of time, the expected result would be a decrease in the number of available credit products. For example, it is now common to offer ARMs with rate adjustments occurring at intervals of one to five years. If a seven-year horizon is set, mainstream lenders are likely to severely restrict the offering of ARM, step or buy-down products with initial rate or payment periods of less than seven years. This will shut at least some consumers out of having a full range of beneficial, time-tested mortgage products from which to choose.

## Restrictions on Stated or Reduced-Documentation Lending

We believe that the market has now corrected itself on stated or reduced-documentation lending. These were fairly new products, and were too widely experimented with before having a time-tested track record. Prime as well as Alt-A or sub-prime clients are subject to potentially misstating income or assets. Investors' and mainstream lenders' underwriting guidelines have now been substantially redesigned to better protect both lenders and borrowers. We do not believe that such loans will pose an undue risk going forward due to "lessons learned" by investors, lenders and the market. We have no issue with rules that would limit such products on loans *already* defined as "high cost" by state or federal definitions. Otherwise, we believe consumers should be allowed a wide choice of loan products, subject to reasonable underwriting guidelines set by lenders and investors. It would not be overly difficult for secondary market lenders to return to requiring full documentation on all products to control increased regulatory risk. However, this will remove a legitimate and useful product choice for some consumers.

For equity lending (home equity lines of credit, junior liens, etc.) that has traditionally been underwritten more to reasonableness, such restrictions would increase the time to closing. BB&T's consumer loan underwriting guidelines require verification of employment only for individuals who are self-employed, commission based, or have income from sources other than salaried jobs. Imposing new requirements will negatively impact our consumer client segment that is currently unaccustomed to providing proof of income and will increase the documentation required and the burden on the client.

### Subordinate-Lien Loans

Junior-lien lending has historically been a "different world" than first-lien lending, with different underwriting guidelines and products. Traditionally, second liens were offered by a different set of lenders, specializing in such liens, and were placed in portfolio or sold to different investors than first liens. Recently, first-lien lenders began to offer seconds as "piggybacks" to concurrent first liens, usually as an alternative to a first lien at a loan-to-value requiring mortgage insurance. As the current market corrections have pointed out the risks of "piggyback" liens, we have seen investors' and mainstream lenders' underwriting guidelines significantly tightened regarding piggybacks and total loan-to-value. Therefore, we believe legislation is unnecessary. Further, because subordinate liens are a significantly different product with different risks and considerations, we believe regulating them with the same brush as first liens is likely to lead to unintended adverse circumstances. Additionally, second liens are more heavily state-regulated than first liens. Again, we anticipate a decrease in consumers' legitimate options if second liens are subjected to additional regulation.

### Pre-Payment Penalties

Pre-payment penalties on loans originated through BB&T's home mortgage division are essentially non-existent. While mortgage loans originated through BB&T's consumer

loan division may contain a pre-payment penalty, the penalty is in conformance with the proposal. Therefore the proposal to restrict pre-payment penalties would have little to no effect on BB&T. We would like to see lenders have a reasonable ability to apply pre-payment penalties if the lender has a business need to manage the levels of early pre-payment in the lender's portfolio. We believe the proposal preserves such ability.

## Escrow Accounts

It is generally beneficial to and preferred by lenders originating for the secondary market to impose an escrow account. Some borrowers also benefit by having their property insurance and assessments managed for them by the lender. However, escrow means that the borrower needs more funds for the loan closing, and loses the option of managing his own cash flow regarding saving toward assessments. Therefore, many borrowers strongly prefer not to have an escrow account. BB&T home mortgage has generally allowed borrowers to waive escrow based on low loan-to-value, although BB&T does continue to monitor to ensure that assessments and insurance are being responsibly maintained. While the home mortgage division would not object to expanding escrow requirements; however, this will again increase borrowers' costs while decreasing their options.

Also, if escrow will be required, it appears to make little sense to require it only for the first twelve months. Elsewhere in the proposal concern is expressed for the borrower's ability to manage mortgage payments for much longer initial periods, up to seven years. Therefore it is not clear why the escrow account requirement would be dropped after twelve months. There are costs to lenders and servicers in setting up and dissolving escrow accounts, and many homeowners would probably dissolve the escrow account as soon as allowed. Meanwhile, twelve months is not likely to have changed the borrower's financial habits.

It should also be made clear that lenders are *not obligated* to escrow borrower-option items. For example, if a borrower chooses to purchase various forms of optional debt-protection insurance, or hazard insurance not required by the lender (such as earthquake insurance), the lender should *not* be required to service this item for the borrower. To do so creates a risk of liability for the lender if a clerical error occurs or if the borrower attempts to argue that the lender had some duty related to the optional product.

For loans originated and held in the BB&T's consumer portfolio, requiring escrow accounts would create undue burdens and reduce the products available to many borrowers. BB&T does not currently offer escrow services for loans that it originates and holds in its portfolio nor does its consumer loan servicing system have escrow capability. To implement this requirement would mean significant programming, training, cost, etc. to BB&T (and ultimately to the client). These costs would likely be prohibitive. If BB&T chose to avoid these costs and not offer higher priced mortgages in the consumer

lending area, it would limit the product offerings available to clients who would qualify given prudent underwriting.

## Payments to Mortgage Brokers

We agree with the intent of the proposal to help ensure that borrowers understand the broker's role and compensation. However, these issues have been legislated with extreme thoroughness at a state level. Also, we expect improved disclosure of broker compensation to be part of upcoming RESPA reform. Additional federal regulation under Regulation Z appears unnecessary. The Board could reduce lenders' and brokers' compliance risks and burdens if a single, uniform federal law replaced the patchwork of state laws.

## Coercion of Appraisers

While we agree with the intent of the proposal, the market appears to have corrected itself and additional federal legislation is unnecessary. We believe that the basic intent of the Board's proposal is embodied in the agreement recently reached between the State of New York and the Government Sponsored Enterprises (GSEs). FDIC (BB&T's primary federal regulator) has similarly addressed the issue in guidance to its regulated institutions, and many states are legislating appraisal issues. If the Board retains the proposal, it should ensure that its provisions are consistent with FDIC regulations and the GSEs' new standards, and should pre-empt all state laws. Significant compliance costs and risks arise from lenders having to deal with a patchwork of varying requirements by various regulators, states and investors. Rather than leaving lenders to analyze each point of state law by pre-empting only inconsistent provisions, on appraisals and other issues in the proposal the Board should simply apply a federal standard that pre-empts all state laws.

## Servicing Practices

BB&T is proud to have received national recognition for the high level of satisfaction expressed by our mortgage servicing clients. We are open to all reasonable means for enhancing client service and favor the intent of the proposal. However, please see our comments below.

**Crediting Payments:** The standard FNMA/FHLMC notes in general use throughout the United States mortgage industry reflect the GSEs' requirement for payments to be credited as of their due date. That is, if the payment due March 1 is received on February 15, it is credited as of March 1, so making the scheduled payment early does not decrease the amount of interest the borrower pays. We presume nothing in the proposal is intended to change this long-standing industry practice and GSE requirement. ***In the absence of clarification, if a borrower litigates on this point, the consequences to the U.S. mortgage industry could be disastrous.*** All systems, forms and procedures for all

major first-lien lenders reflect current practices. Current practice gives investors a level of confidence they would not otherwise have in predicting yields, helping to hold down the rates and fees for mortgage credit.

For products offered by BB&T's consumer lending division, payments are credited as of the date received. Since all interest accrues according to daily simple interest calculations, early payments are to a borrower's benefit. However, if the client makes a payment in a branch after 2:00 pm that payment is considered to have been received the next day and is credited as of that day. It is a standard and common practice in banks to have a cutoff time for accepting transactions that will be posted as of the current business day. This cutoff time is necessary in order to process and post all transactions received. We recommend that any final rule clarify that it is not imposing new requirements as to reasonable cutoff times for processing as any requirement to change cutoff times would create significant programming issues and costs to the industry.

**Schedule of Fees:** Fees related to third-party services (especially services related to the borrower's default) should either be omitted, or clearly labeled as estimates only. Servicers are not in control of such fees, and over a loan's life reasonable fees for third-party services may change considerably. Additionally, state law may change the amount or nature of fees at any time (such as fees for payoff quotes or lien releases). For a large servicer with loans in multiple states, it may be logistically impossible to accurately describe third-party fees in each local area on an ongoing basis. Again, rates and fees charged to consumers will have to rise to account for the increased work and risk faced by servicers due to this proposal. The loan contract documents already describe allowable fees in general, and state law usually prohibits charging fees that are not agreed to in the loan contract. State law generally contains additional protections such as caps on certain fees, and new state legislation is requiring servicers to disclose and plainly describe fees within a certain time of incurring the fees in order to pass them along to the client. Fees for routine services such as payoffs and releases are generally nominal. The larger fees are typically third-party fees linked to events within the borrower's control, i.e. the borrower's default under the loan contract. In short, this part of the proposal would create largely uncontrollable liability for servicers, possibly providing borrowers with yet another way to forestall the lender's efforts to control losses when the borrower is in default. This in turn leads to increased costs for all consumers.

## Advertising Rules

We believe that the advertising rules will help level the playing field between legitimate, mainstream lenders and "fly-by-night" lenders that lure unsophisticated consumers with misleading advertising. However, daily experience shows that existing advertising rules are not being enforced. Newspaper ads, flyers, and unsolicited e-mails and faxes contain blatant violations by non-bank lenders, yet we rarely hear of any enforcement activity. As a major servicer, BB&T often has clients bring to our attention solicitations received from mortgage companies designed to appear as invitations from BB&T to refinance at

special rates. Numerous states prohibit solicitations using another lender's name without permission, but we are not aware of any state that has followed through with a prosecution. BB&T itself cannot benefit from spending resources to pursue these companies individually, as expenses may exceed recompense and the company can pop up again quickly in another locale with another name. Enforcement – *particularly* for non-bank lenders and brokers - must occur for any existing or future advertising rules to be meaningful.

## Early Disclosures

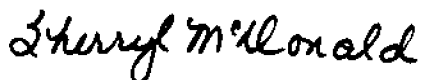
BB&T has voluntarily adopted the practice of extending early disclosures to types of transactions not presently covered, such as mortgage refinancings, in order to better inform and serve our clients. However, because this does increase lenders' costs, however minimally, we are not seeking to impose our practices on other lenders and would rather this remain a voluntary practice rather than a regulatory requirement.

## Effective Date

We note that, depending upon the date when final regulations are published, the implementation period may be as short as six months. Depending upon the aspects of the proposal that may become actual requirements of the final rule, six months may be far too short for the industry to realistically implement the new rules. Programming, forms, training manuals and procedures may require extensive changes. At the same time, lenders are facing a flood of other state and federal legislation, some of which presents major challenges. Taken as a whole, the Board's proposal and other unrelated laws and regulations may overwhelm lenders' resources at a time when lenders are also struggling with market challenges. An 18-month implementation window would be strongly recommended if the proposal is enacted in essentially its present form. If substantial burdens are removed in the final rules, then a shorter implementation period may be in order, again depending on other implementation challenges that may occur simultaneously for the industry (such as RESPA reform).

BB&T appreciates this opportunity to comment on the Board's proposal and hopes our comments are helpful.

Sincerely,



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